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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT PAPER NUMBER

3727

DATE MAILED: 09/17/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

S.M-

Office Action Summary

Application No.

09/755,408

Applicant(s)

NURSE, ROBERT I.

Examiner

Stephen J. Castellano

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 8-20 is/are pending in the application.
- 4a) Of the above claim(s) 18-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 8-17 is/are rejected.
- 7) ☒ Claim(s) 2, 3, 5, 8, 9 and 13-15 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 6) ☐ Other: _____

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Claims 18-20 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 9.

Applicant's election with traverse of claims 1-17 in Paper No. 9 is acknowledged. The traversal is on the ground(s) that the product and method claims are a single invention. This is not found persuasive because the examiner has provided the proper reasoning and the different classification of the inventions. None of applicant's comments are directed to reasoning or the classification.

The requirement is still deemed proper and is therefore made FINAL.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the strut being articulably joined to said sidewall at said proximal end as stated in claim 2, the strut is joined to the container at a hinge juxtaposed with the floor pan as stated in claim 3, the protruding tabs and slots arrangement as stated in claim 5, the first and second materials of dissimilar material as stated in claim 13 and the identical composition and second gauge being greater than the first gauge as stated in claim 15 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. Regarding claims 2 and 3, these claims are directed to a combination of a container and a strut, the container doesn't include the strut.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-5 and 8-17 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant uses the word "strut" to describe a reinforcing panel. A strut is a bar or rod used to brace a structure against forces applied from the side. It is inappropriate to use the word strut to define a panel.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-5, 8, 9 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 contains a double inclusion of "upstanding strut" because "at least one upstanding strut" is introduced in line 2 and "an upstanding strut" is recited in line 3 without either referring to the at least one upstanding strut with the word "said" or "the" or refers to a different strut without providing any definitive distinction.

Claim 1 recites the limitation "said strut" in line 3. There is insufficient antecedent basis for this limitation in the claim. It can't be determined which strut is meant or even if two struts are being claimed.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Nichols.

Nichols discloses a container comprising an inner tank (30) and a reinforcement (outer container (11)) comprising a strut (one of the mesh panel side walls (16 or 18)), the strut reinforces one of the side walls of the inner tank.

Claims 10-13 and 16 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Artusi.

Claims 10-13 are rejected under 35 U.S.C. 102(b) as being anticipated by British reference No. ('514) to (Harrison).

Harrison discloses a container (inner container (10)) having a plurality of upstanding side walls interconnected by a floor pan, the side walls being arranged in opposing pairs, one of the pairs of side walls being reinforceable with a reinforcement or removable struts (walls 28 and 32 of case 26) when the case is attached to the side walls as shown in Fig. 2-4, a first position is achieved, where the struts provide reinforcement to the side walls, when the case is detached from the side walls as shown in Fig. 1, a second position is achieved, where the struts do not provide reinforcement to the side walls, these two positions make the struts reversibly transformable. The floor pan support is the pair of sidewalls (30, 34) of the case (26).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nichols in view of Harrison.

Nichols discloses the invention except for the tab/slot arrangement with tabs on the side wall. Nichols discloses a mesh panel strut with slots and notches. Harrison teaches the tab/slot arrangement with tabs on the side wall. It would have been obvious to add tabs on the side wall to provide a tab/slot arrangement in order to secure the side wall and strut to each other to minimize or eliminate movement of the side wall with respect to the strut to prevent misalignment and wear from occurring at the side wall to strut interface.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Artusi or Harrison.

Artusi and Harrison each disclose the invention except for the cardboard is not fluted cardboard. Fluted cardboard is well known. It would have been obvious to substitute fluted cardboard for the cardboard of Artusi in order to provide more strength.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Harrison.

Harrison discloses the invention except for materials of identical composition and different gauge. It would have been obvious to use identical composition in order to provide similar adherence in the laminate described on page 2, line 53 with both base 10 and 36. It would have been obvious to provide a thicker gauge on the second material of case 26 in order to provide greater strength for reinforcement in the case 26.

Since no drawing represents claims 2, 3, 5, 8-9 and 13-15, these claims are objected to has not being represented within the drawings.

Applicant's arguments with respect to claims 5, 8 and 9 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed July 26, 2002 have been fully considered but they are not persuasive. In response to the Nichols anticipatory rejection, applicant states that the outer container is a complete box structure to contain the plastic bag-like inner tank, therefore there are no independent struts used to support the side walls of the inner tank. This statement is conclusionary and is not based upon reasoned facts. The struts are formed by mesh panels insofar as applicant as claimed panels to reinforce the side walls of the container. Applicant also comments on the strut being removable from the sidewalls without separation from the container. It seems that sidewalls 16 and 18 of the outer container of Nichols may rotate away from walls of the inner tank without the inner tank being removed or separated from the outer container.

In response to the Artusi anticipatory rejection, applicant directs attention to the seal between the rim of the blank and the edge strip of the tray and that this seal prevents reversible transformation. Although sealed, seals may be broken or removed. During assembly, the tray is placed upon the blank prior to sealing. Before sealing, Artusi meets the claim limitation of the struts being reversibly transformable between a first position wherein the struts provide reinforcement to the sidewalls and a second position wherein the struts do not provide reinforcement.

In response to the Harrison anticipatory rejection, applicant states that the outer case does not have struts nor any other element which can be removed from a reinforcing position while remaining attached to the container. Claim 10 doesn't require that the struts remain attached to the container.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc
September 12, 2002